



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No. Para12091459

██████████,  
Complainant,

v.

HARBOR FREIGHT TOOLS,  
HARBOR FREIGHT TOOLS USA, INC. D/B/A HARBOR FREIGHT TOOLS,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred in this instance. 910 IAC 1-3-2(b).

On September 10, 2012, ██████████ (“Complainant”) filed a Complaint with the Commission against Harbor Freight Tools USA, Inc. d/b/a Harbor Freight Tools/Harbor Freight Tools (“Respondent”) alleging discrimination on the basis of race, in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue before the Commission is whether Complainant was subjected to different terms and conditions when denied equal access to Respondent’s merchandise return services. In order to prevail on such a Complaint, the Complainant must prove: 1) Complainant falls within a protected class; 2) Complainant was qualified, ready, willing and able to return purchases in accordance with Respondent’s terms and conditions; 3) Complainant was denied the opportunity to return merchandise; and 4) Respondent failed or refused to offer Complainant similar terms that was offered to customers from a comparable class.

Complainant is a member of a protected class by virtue of his race. Further, Complainant was qualified, ready, willing, and able to return items in accordance with Respondent’s return policy, but was treated less favorably than other comparable classes of customers. In this instance, Complainant was a frequent customer of Respondent’s establishment and had



returned opened merchandise in the past. On the day in question, while it is disputed whether Complainant was permitted to return an item he had previously purchased and opened, it is clear that he was “red flagged” in the system as an individual who “rents” merchandise. According to Respondent’s return policy, “merchandise may be returned within 90 days of purchase for a refund or exchange in the original tender” and “proof of purchase is required for all returns and exchanges.” It is undisputed by the parties that Complainant’s return fell within the parameters of the policy. Moreover, comparative data introduced by the Respondent was inconclusive to substantiate that non-African-American customers were treated in a manner similar or equal to the Complainant. While Respondent provided computer print-outs for other customers who were “red flagged” for similar offenses, Complainant’s records included a customer number, a first and last name, as well as Complainant’s address and zip code. The other print-outs only identified customers by their first name and zip code; they did not include the supposedly similarly-situated customers’ last names or addresses.

Since it appears that Respondent treated Complainant in a more stringent manner than similarly situated customers of another race, probable cause exists to believe that an unlawful discriminatory practice may have occurred in this case. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5.

The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this notice or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

May 6, 2013

Date

Akia A. Haynes

Akia Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission